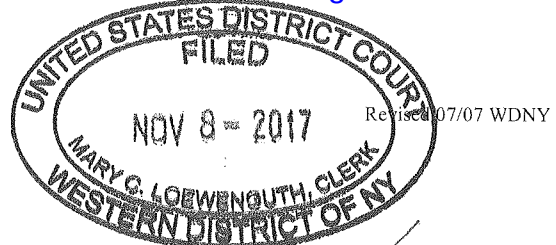


**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK**



Iredell H. Foster  
20 villa moraine dr  
Cheektowaga NY 14225  
Name(s) of Plaintiff or Plaintiffs

Jury Trial Demanded: Yes ☒ No ☐

-VS-  
NYS Dept of Corrections  
Wende Corrections  
Name of Defendant or Defendants

**DISCRIMINATION COMPLAINT**

**17** -CV- **CV1151** ✓

You should attach a copy of your **original Equal Employment Opportunity Commission (EEOC) complaint**, a copy of the Equal Employment Opportunity Commission **decision**, AND a copy of the **"Right to Sue"** letter you received from the EEOC to this complaint. Failure to do so may delay your case.

**Note:** Only those grounds raised in the charge filed with the Equal Employment Opportunity Commission can be considered by the federal district court under the federal employment discrimination statutes.

This action is brought for discrimination in employment pursuant to (*check only those that apply*);

☒ Title VII of the Civil Rights Act of 1964, as codified, 42 U.S.C. §§ 2000e to 2000e-17 (amended in 1972, 1978 and by the Civil Rights Act of 1991, Pub.L.No. 102-166) (race, color, gender, religion, national origin).

**NOTE:** In order to bring suit in federal district court under Title VII, you **must first obtain a right to sue letter** from the Equal Employment Opportunity Commission.

☐ Age Discrimination in Employment Act of 1967, as codified, 29 U.S.C. §§ 621-634 (amended in 1984, 1990, and by the Age Discrimination in Employment Amendments of 1986, Pub.L.No. 99-592, the Civil Rights Act of 1991, Pub.L.No. 102-166).

**NOTE:** In order to bring suit in federal district court under the Age Discrimination in Employment Act, you **must first file charges** with the Equal Employment Opportunity Commission.

☐ Americans with Disabilities Act of 1990, as codified, 42 U.S.C. §§ 12112-12117 (amended by the Civil Rights Act of 1991, Pub.L.No. 102-166).

**NOTE:** In order to bring suit in federal district court under the Americans with Disabilities Act, you **must first obtain a right to sue letter** from the Equal Employment Opportunity Commission.

**JURISDICTION** is specifically conferred upon this United States District Court by the aforementioned statutes, as well as 28 U.S.C. §§ 1331, 1343. Jurisdiction may also be appropriate under 42 U.S.C. §§ 1981, 1983 and 1985(3), as amended by the Civil Rights Act of 1991, Pub.L.No. 102-166, and any related claims under New York law.

In addition to the federal claims indicated above, you may wish to include New York State claims, pursuant to 28 U.S.C. § 1367(a).

X New York State Human Rights Law, N.Y. Exec. Law §§ 290 to 297 (age, race, creed, color, national origin, sexual orientation, military status, sex, disability, predisposing genetic characteristics, marital status).

## PARTIES

1. My address is: 20 Villa moraine Dr  
Cheektowaga NY 14225

My telephone number is: 716 429 6785

2. The name of the employer(s), labor organization, employment agency, apprenticeship committee, state or local government agency who I believe discriminated against me is/are as follows:

Name: NYS Dept of corrections

Number of employees: Wende Correctional Facility

Address: 3040 Wende Rd Alden NY 14004

3. (If different than the above), the name and/or the address of the defendant with whom I sought employment, was employed by, received my paycheck from or whom I believed also controlled the terms and conditions under which I were paid or worked. (For example, you worked for a subsidiary of a larger company and that larger company set personnel policies and issued you your paycheck).

Name: N/A

Address: \_\_\_\_\_

## CLAIMS

4. I was first employed by the defendant on (date): August 1, 2005

5. As nearly as possible, the date when the first alleged discriminatory act occurred is: November 2014

6. As nearly as possible, the date(s) when subsequent acts of discrimination occurred (if any did): OCT, 24, 2016 DEC 16 2016 NOV, 2014

7. I believe that the defendant(s)

a.        Are still committing these acts against me.

b. X Are not still committing these acts against me.

(Complete this next item **only** if you checked "b" above) The last discriminatory act against me occurred on (date) December 16 2016

I was terminated December 17 2016

8. (Complete this section **only** if you filed a complaint with the New York State Division of Human Rights)

The date when I filed a complaint with the New York State Division of Human Rights is

January 17, 2017  
(estimate the date, if necessary)

I filed that complaint in (identify the city and state): Buffalo NY

The Complaint Number was: 10185712  
copy Attached AS Exhibit.

9. The New York State Human Rights Commission did X /did not        issue a decision. (NOTE: If it **did** issue a decision, you **must attach** one copy of the decision to **each** copy of the complaint; failure to do so will delay the initiation of your case.) copy Attached as Exhibit.

10. The date (if necessary, estimate the date as accurately as possible) I filed charges with the Equal Employment Opportunity Commission (EEOC) regarding defendant's alleged discriminatory conduct is: Jan, 17 2017 NYS Human Rights.

11. The Equal Employment Opportunity Commission did X /did not        issue a decision. (NOTE: If it **did** issue a decision, you **must attach** one copy of the decision to **each** copy of the complaint; failure to do so will delay the initiation of your case.)

12. The Equal Employment Opportunity Commission issued the attached Notice of Right to Sue letter which I received on: about Aug 23 2017. (NOTE: If it

**did** issue a Right to Sue letter, you **must attach** one copy of the decision to **each** copy of the complaint; failure to do so will delay the initiation of your case.) *copy attached*

13. I am complaining in this action of the following types of actions by the defendants:

- a. \_\_\_\_\_ Failure to provide me with reasonable accommodations to the application process
- b. \_\_\_\_\_ Failure to employ me
- c. X Termination of my employment
- d. \_\_\_\_\_ Failure to promote me
- e. \_\_\_\_\_ Failure to provide me with reasonable accommodations so I can perform the essential functions of my job
- f. \_\_\_\_\_ Harassment on the basis of my sex
- g. X Harassment on the basis of unequal terms and conditions of my employment
- h. X Retaliation because I complained about discrimination or harassment directed toward me
- i. \_\_\_\_\_ Retaliation because I complained about discrimination or harassment directed toward others
- j. \_\_\_\_\_ Other actions (please describe) \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

14. Defendant's conduct is discriminatory with respect to which of the following (*check all that apply*):

- a. X Race
- b. X Color
- c. \_\_\_\_\_ Sex
- d. \_\_\_\_\_ Religion
- e. \_\_\_\_\_ National Origin
- f. \_\_\_\_\_ Sexual Harassment
- g. \_\_\_\_\_ Age  
 \_\_\_\_\_ Date of birth
- h. \_\_\_\_\_ Disability  
 Are you incorrectly perceived as being disabled by your employer?  
 \_\_\_\_\_ yes \_\_\_\_\_ no

15. I believe that I was X/was not \_\_\_\_\_ **intentionally** discriminated against by the defendant(s).

16. I believe that the defendant(s) is/are \_\_\_\_\_ is not/are not X still committing these acts against me. (If you answer is that the acts are not still being committed, state when: December 16 2016 and why the defendant(s) stopped committing these acts against you: Because it was terminated Dec. 17 2017)

17. **A copy of the charge to the Equal Employment Opportunity Commission is attached to this complaint and is submitted as a brief statement of the facts of my claim.** (NOTE: You **must** attach a copy of the **original complaint** you filed with the Equal Employment Opportunity Commission and a copy of the **Equal Employment Opportunity Commission affidavit** to this complaint; failure to do so will delay initiation of your case.)

18. The Equal Employment Opportunity Commission (*check one*):  
☐ **has not** issued a Right to sue letter  
☒ **has** issued a Right to sue letter, which I received on Aug 23 2017

19. State here as briefly as possible the *facts* of your case. Describe how each defendant is involved, including *dates* and *places*. Do not give any legal arguments or cite any cases or statutes. If you intend to allege a number of related claims, number and set forth each claim in a separate paragraph. (*Use as much space as you need. Attach extra sheets if necessary.*)

See Attached copy of Myo Human Rights Complaint.

**FOR LITIGANTS ALLEGING AGE DISCRIMINATION**

20. Since filing my charge of age discrimination with the Equal Employment Opportunity Commission regarding defendant's alleged discriminatory conduct \_\_\_\_\_ 60 days or more have elapsed \_\_\_\_\_ less than 60 days have elapsed

**FOR LITIGANTS ALLEGING AN AMERICANS WITH DISABILITIES ACT CLAIM**

21. I first disclosed my disability to my employer (or my employer first became aware of my disability on \_\_\_\_\_)

22. The date on which I first asked my employer for reasonable accommodation of my disability is \_\_\_\_\_ N/A
23. The reasonable accommodations for my disability (if any) that my employer provided to me are: \_\_\_\_\_  
\_\_\_\_\_ N/A  
\_\_\_\_\_
24. The reasonable accommodation provided to me by my employer were N/A were not  
\_\_\_\_\_ effective.

**WHEREFORE**, I respectfully request this Court to grant me such relief as may be appropriate, including injunctive orders, damages, costs and attorney's fees.

Dated: 10-24-17

  
\_\_\_\_\_  
Plaintiff's Signature

NEW YORK STATE  
DIVISION OF HUMAN RIGHTS

RECEIVED  
JAN 17 2017  
NYS DH R BUFFALO  
REGIONAL OFFICE

NEW YORK STATE DIVISION OF  
HUMAN RIGHTS on the Complaint of

TREDELL FEASTER,

Complainant,

v.

NEW YORK STATE, DEPARTMENT OF  
CORRECTIONS AND COMMUNITY SUPERVISION,  
Respondent.

VERIFIED COMPLAINT  
Pursuant to Executive Law,  
Article 15

Case No.  
**10185712**

Federal Charge No. 16GB701106

I, Tredell Feaster, residing at 20 Villa Moraine Dr., Cheektowaga, NY, 14225, charge the above named respondent, whose address is The Harriman State Campus, Bldg. 2, 1220 Washington Ave., Albany, NY, 12226-2050 with an unlawful discriminatory practice relating to employment in violation of Article 15 of the Executive Law of the State of New York (Human Rights Law) because of race/color, opposed discrimination/retaliation.

Date most recent or continuing discrimination took place is 12/17/2016.

The allegations are:

1. I am African American and made prior internal complaints of discrimination. Because of this, I have been subject to unlawful discriminatory actions.
2. On or about 08/01/2005, I was hired by the respondent and last held the position of Corrections Officer at Wende Correctional Facility in Alden NY. I last worked the 7:00AM – 3:00 PM shift.
3. Sergeant Timothy Lewalski (Caucasian) harassed me and targeted me for termination from the time I returned to his shift, in or around October 2016, until the end of my employment because of my race/color and to retaliate against me for having made prior internal complaints of discrimination. I had previously made internal discrimination complaints against Sergeant Lewalski's friend, Sergeant Johnson (Caucasian) which resulted in me being placed on a two-year probation beginning around August 2015. Sergeant Johnson stopped harassing me but Sergeant Lewalski began.
4. For example, Lewalski would ask a Caucasian co-worker standing next to me how many years he had on the job. After the co-worker answered, Lewalski would state, "You'll probably make it to 25 years but some won't." I believe he was referring to me when he said, "some won't" and that he made these statements in order to bully and intimidate me as a means of retaliating against me and because of my race. I complained to my superiors on more than one



occasion that Lewalski was bullying me. I took this action because the respondent had enclosed a document with paychecks which read, "Bullying will not be tolerated". However, when I reported bullying, my superiors laughed at me and said, how can you be bullied, big as you are". And took no corrective action.

5. On or about 10/28/2016, several Corrections Officers and I were joking with each other, accusing each other of not working, among other things. The others were all Caucasian except C.O. Jacobs, who was African American. Lewalski singled me out, saying to me, "Why don't you learn how to work?" Everyone immediately stopped talking. Lewalski then walked me up front and threatened my employment, saying to me, "Aren't you on probation". I answered that I was and he replied, "Well if you're not scared you ought to be, If I were you, I would be." He kept me two hours and as Lewalski and I were walking up the hallway, C.O. Sota walked up to us and said that he apologized. He said they all had been joking around and "didn't know things were going left". However, Lewalski said to Sota, "This has nothing to do with you". I made a complaint about this incident alleging race discrimination upon the advice of an African American deputy.

6. On or about 12/08/2016, Lewalski verbally reprimanded me for something others were not reprimanded for doing, having both "in-gates" open while inmates were being fed. The next day, Caucasian C.O. Kowal also had both "in-gates" open while he was talking and joking with Lewalski and Lewalski did not reprimand Kowal.

7. On 12/16/2016, Lewalski yelled at me and told me to come up front with him after I had frisked an inmate and allowed him to go into the yard although his shoes had caused the alarm to sound while I was frisking him. I asked Lewalski why he was yelling at me because other guards habitually also allowed this inmate into the yard without making him take his shoes off. Lewalski directed me to come up front with him.

8. The next day, 12/17/2016, the respondent issued me a disciplinary action because of this incident and terminated my employment. I believe the respondent singled me out to discipline for this practice because they know that the discipline would be grounds for dismissal since I was on a two-year probation. I believe the respondent subjected me to disparate treatment and termination of employment because of my race/color and to retaliate against me for making prior internal complaints of discrimination.

Based on the foregoing, I charge respondent with an unlawful discriminatory practice relating to employment because of race/color, opposed discrimination/retaliation, in violation of the New York State Human Rights Law (Executive Law, Article 15), Section 296.

I also charge the above-named respondent with violating Title VII of the Civil Rights Act of 1964, as amended (covers race, color, creed, national origin, sex relating to employment). I hereby authorize SDHR to accept this verified complaint on behalf of the U.S. Equal Employment Opportunity Commission (EEOC) subject to the statutory limitations contained in the aforementioned law(s).



I have not commenced any other civil action, nor do I have an action pending before any administrative agency, under any state or local law, based upon this same unlawful discriminatory practice.

  
Tredell Feaster

STATE OF NEW YORK    )  
COUNTY OF            )   SS:

Tredell Feaster, being duly sworn, deposes and says: that he/she is the complainant herein; that he/she has read (or had read to him or her) the foregoing complaint and knows the content thereof; that the same is true of his/her own knowledge except as to the matters therein stated on information and belief; and that as to those matters, he/she believes the same to be true.

  
Tredell Feaster

Subscribed and sworn to  
before me this 17 day  
of January, 2017

  
Signature of Notary Public

BEVERLY A. FRESCHOLTZ  
Notary Public, State of New York  
No. 01FR6187237  
Qualified in Erie County  
My Commission Expires May 19, 2018

## U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

## DISMISSAL AND NOTICE OF RIGHTS

To: **Tredell Feaster**  
**20 Villa Moraine Dr.**  
**Cheektowaga, NY 14225**

From: **New York District Office**  
**33 Whitehall Street**  
**5th Floor**  
**New York, NY 10004**



On behalf of person(s) aggrieved whose identity is  
 CONFIDENTIAL (29 CFR §1601.7(a))

EEOC Charge No.

EEOC Representative

Telephone No.

**16G-2017-01106**

**Holly M. Woodyard,**  
**State & Local Program Manager**

**(212) 336-3643**

## THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:



The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.



Your allegations did not involve a disability as defined by the Americans With Disabilities Act.



The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.



Your charge was not timely filed with EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge



The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.



The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.



Other (briefly state)

## - NOTICE OF SUIT RIGHTS -

(See the additional information attached to this form.)

**Title VII, the Americans with Disabilities Act, the Genetic Information Nondiscrimination Act, or the Age Discrimination in Employment Act:** This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit **must be filed WITHIN 90 DAYS of your receipt of this notice**; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

**Equal Pay Act (EPA):** EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.**

On behalf of the Commission

Enclosures(s)

  
**Kevin J. Berry,**  
**District Director**

**August 23, 2017**

(Date Mailed)

cc: **NYS, DEPT OF CORRECTIONS**  
**Attn: Kimberly M. Carr,**  
**Affirmative Action Adminr 2**  
**The Harriman State Campus, Bldg. 2**  
**1220 Washington Ave.**  
**Albany, NY 12226-2050**



**Division of  
Human Rights**

NEW YORK STATE  
DIVISION OF HUMAN RIGHTS

NEW YORK STATE DIVISION OF  
HUMAN RIGHTS on the Complaint of

TREDELL FEASTER,

Complainant,

v.

NEW YORK STATE, DEPARTMENT OF  
CORRECTIONS AND COMMUNITY SUPERVISION,  
Respondent.

DETERMINATION AND  
ORDER AFTER  
INVESTIGATION

Case No.  
10185712

Federal Charge No. 16GB701106

On 1/17/2017, Tredell Feaster filed a verified complaint with the New York State Division of Human Rights ("Division") charging the above-named respondent with an unlawful discriminatory practice relating to employment because of race/color, opposed discrimination/retaliation in violation of N.Y. Exec. Law, art. 15 (Human Rights Law).

After investigation, and following opportunity for review of related information and evidence by the named parties, the Division has determined that there is NO PROBABLE CAUSE to believe that the respondent has engaged in or is engaging in the unlawful discriminatory practice complained of. This determination is based on the following:

The investigation did not reveal sufficient evidence to support a reasonable belief that complainant was treated in a disparate manner or terminated, because of his race/color or in retaliation for filing an internal discrimination complaint.

A review of the record shows that complainant was terminated on 12/19/16 for insubordination after a series of progressive disciplinary actions for disobeying superior orders. The record shows that complainant had been issued 2, consecutive 2-year Disciplinary Evaluation Programs (i.e., last chance probationary periods) for infractions against different supervisors at different times; the first to conclude 8/17 and the second to end in 8/19. In both situations, complainant was aware that any further infractions could result in immediate termination.

A review of the record shows that complainant filed an internal discrimination complaint on 11/09/16; respondent was still investigating that matter when complainant filed the instant charge on 1/17/17. There record does not show that there were any other internal complaints filed prior to that date.

The record shows that African Americans make up 25% of the workforce at this location. The record also reflects that of 14 security employees disciplined between January and December 2016 at this facility, 9 are Caucasian and 5 are Black. At least one Caucasian was disciplined with an 18-month suspension and 12-months of probationary period or Disciplinary Evaluation Program for failing to conduct a proper search and making a false report about the proper search. There is no indication that this Caucasian employee was serving a prior disciplinary probationary period at the time of the suspension, as complainant was.

The evidence does not support a reasonable conclusion that complainant was subjected to unlawful discriminatory actions based on his race/color or in retaliation.

The complaint is therefore ordered dismissed and the file is closed.

PLEASE TAKE NOTICE that any party to this proceeding may appeal this Determination to the New York State Supreme Court in the County wherein the alleged unlawful discriminatory practice took place by filing directly with such court a Notice of Petition and Petition within sixty (60) days after service of this Determination. A copy of this Notice and Petition must also be served on all parties including General Counsel, State Division of Human Rights, One Fordham Plaza, 4th Floor, Bronx, New York 10458. DO NOT FILE THE ORIGINAL NOTICE AND PETITION WITH THE STATE DIVISION OF HUMAN RIGHTS.

Your charge was also filed under Title VII of the Civil Rights Act of 1964. Enforcement of the aforementioned law(s) is the responsibility of the U.S. Equal Employment Opportunity Commission (EEOC). You have the right to request a review by EEOC of this action. To secure review, you must request it in writing, within 15 days of your receipt of this letter, by writing to EEOC, New York District Office, 33 Whitehall Street, 5th Floor, New York, New York 10004-2112. Otherwise, EEOC will generally adopt our action in your case.

Dated: 7-13-17  
Buffalo, New York

STATE DIVISION OF HUMAN RIGHTS

By:   
Debbie S. Kent  
Regional Director